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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

WILLIAM JAY PRICE, Plaintiff and Appellant, v. AUDREY KING et al., Defendants and Respondents.	F075142 (Super. Ct. No. 16CECG02526) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Jeffrey Y. Hamilton, Jr., Judge.

William Price, in pro per., for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Ismael A. Castro and Laurie N. Adamson, Deputy Attorneys General, for Defendants and Respondents.

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Plaintiff challenges the judgment entered after the trial court sustained defendants' demurrer to the first amended complaint without leave to amend. We conclude the trial court was correct in its determination that the first amended complaint failed to state a cause of action against defendants. Further, plaintiff has not suggested how the first

amended complaint could be amended to state a cause of action against them. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, acting without an attorney, filed his original complaint, which contained seven causes of action; it named eight individuals as defendants and generally alleged the unconstitutionality of certain state statutes, violation of plaintiff's civil rights, and breach of contract. Defendants' demurrer to the complaint was sustained with leave to amend. The trial court's ruling noted that, although defendants were named in the caption, they were not mentioned in the body of the complaint. There were no allegations against the individuals, and no allegations explaining their relationship to plaintiff or to the claims alleged in the complaint.

Plaintiff filed a first amended complaint, containing the same seven causes of action, alleged against seven of the original individuals. He alleged he had been civilly committed to facilities of the State Department of State Hospitals (DSH) for the past 15 years, and was currently committed to Coalinga State Hospital, pursuant to the Sexually Violent Predators Act (SVPA; Welf. & Inst. Code, §§ 6600–6609.2).[1] He alleged he completed the first four phases of his original treatment program, and submitted paperwork to move to phase five, community release to Liberty Healthcare for supervised outpatient treatment in the community. However, the five-phase program was replaced with other treatment programs, which he labeled "sham" programs, and he remained confined at Coalinga State Hospital.

Plaintiff added allegations regarding defendants. He alleged variously that they taught his classes at Coalinga State Hospital, facilitated his groups, provided books and materials for his treatment programs, and created and promoted the program materials. Defendant, Audrey King, allegedly was the Executive Director of Coalinga State

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1 All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

Hospital, who supervised the treatment program and approved the actions of her subordinates. Plaintiff generally complained that defendants continued to confine him and subject him to treatment programs, without determining whether he was still dangerous enough to warrant confinement and without attempting to find a less restrictive alternative to confinement.

Defendants demurred to the first amended complaint, challenging all of plaintiff's causes of action. The trial court sustained the demurrer without leave to amend and dismissed plaintiff's complaint. Plaintiff appeals.

DISCUSSION

I. Standard of Review

"On appeal from a dismissal after an order sustaining a demurrer, we review the order de novo, exercising our independent judgment about whether the complaint states a cause of action as a matter of law. [Citations.] We give the complaint a reasonable interpretation, reading it as a whole and viewing its parts in context." (*Lazar v. Hertz Corp*. (1999) 69 Cal.App.4th 1494, 1501.) " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.' " (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) " 'We do not review the reasons for the trial court's ruling; if it is correct on any theory, even one not mentioned by the court, and even if the court made its ruling for the wrong reason, it will be affirmed.' " (*Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 637.) " 'When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys.… Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.' " (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125–1126.)

California state courts, however, should apply federal law to determine whether a complaint pleads a cause of action under the federal Civil Rights Act (42 U.S.C. § 1983) sufficient to survive a general demurrer. (*Bach v. County of Butte* (1983) 147 Cal.App.3d

554, 558, 563.) Under federal law, we review the sufficiency of the complaint de novo. (*Karim-Panahi* (9th Cir. 1988) 839 F.2d 621, 623 (*Karim-Panahi*).) The plaintiff need not set out in detail the facts upon which he bases his claim; he is only required to set out a short and plain statement of his claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. (*Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit* (1993) 507 U.S. 163, 168; Fed. Rules Civ. Proc., rule 8(a)(2), 28 U.S.C.) "To survive a motion to dismiss [i.e., the federal equivalent of a demurrer], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' [Citation.] A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (*Ashcroft v. Iqbal* (2009) 556 U.S. 662, 678.) "In civil rights cases where the plaintiff appears pro se, the court must construe the pleadings liberally and must afford plaintiff the benefit of any doubt." (*Karim-Panahi, supra,* 839 F.2d at p. 623.)

II. Overview of SVPA

Under the SVPA, a sexually violent predator is "a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (§ 6600, subd. (a)(1).) Before a person who is believed to be a sexually violent predator is released from prison, the person may be evaluated by experts and assessed by the DSH to determine whether he or she meets the statutory definition of a sexually violent predator. (§ 6601.) If the DSH and the appropriate county concur in the belief the person meets that definition, the county files a petition for commitment with the court. (§ 6601, subds. (h), (i).) The parties are entitled to a jury trial. (§ 6603.) If the court or jury finds the person to be a sexually violent predator beyond a reasonable doubt, the person is

committed for an indeterminate term to the custody of the DSH "for appropriate treatment and confinement in a secure facility." (§ 6604.)

A qualified professional must conduct an examination of the committed person's mental condition annually, and consider whether the committed person continues to meet the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional discharge is in the best interest of the person. (§ 6604.9, subds. (a), (b).) If the DSH determines that either (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator and should, therefore, be considered for unconditional discharge, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director of the DSH must authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. (§ 6604.9, subd. (d).) A committed person may also petition for conditional release without the recommendation of the director. (§ 6608, subd. (a).)

If a petition for unconditional discharge survives a show cause hearing, the parties have a right to a jury trial, at which the burden is on the state to prove beyond a reasonable doubt that the person remains a sexually violent predator. (§§ 6604.9, subd. (f), 6605.) If a petition for conditional release is filed, a court trial is held, at which the committed person bears the burden of proof by a preponderance of the evidence, unless the annual evaluation report (§ 6604.9, subd. (a)) "determines that conditional release to a less restrictive alternative is in the best interest of the person and that conditions can be imposed that would adequately protect the community, in which case the burden of proof shall be on the state to show, by a preponderance of the evidence, that conditional release is not appropriate." (§§ 6604.9, subd. (e), 6608, subds. (g), (k).) "If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment

in the community, the court shall order the committed person placed with an appropriate forensic conditional release program," which "shall include outpatient supervision and treatment." (§ 6608, subd. (g).)

III. Unconstitutionality of the SVPA

Plaintiff's first and second causes of action challenge the constitutionality of the SVPA, facially and as applied.

A. Facial challenge

The first cause of action challenges the SVPA on its face. "A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 (*Tobe*).) The challenger " ' "must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." ' " (*Ibid*.)

Plaintiff alleges the SVPA is facially unconstitutional because it violates the Fourteenth Amendment to the United States Constitution. He asserts the statutory scheme lacks an intermediate level of custody, short of full confinement at Coalinga State Hospital, that is available without the patient petitioning the court; it also does not require immediate discharge of patients who no longer need confinement, as opposed to outpatient treatment. Plaintiff alleges there are only two methods in the SVPA for obtaining a reduction of custody to something less restrictive than confinement at Coalinga State Hospital: (1) "unsupervised release, requiring usually a jury trial," and (2) "conditional release to Liberty [Healthcare], which requires going through a bench trial where I have to prove in an adversary trial that my dangerousness has decreased enough to qualify."

The prayer of the first amended complaint requests a finding that Coalinga State Hospital is in violation of the Fourteenth Amendment; it also requests certain injunctive orders to the DSH and Coalinga State Hospital. The only relief that may apply to the

named defendants is his request for a temporary restraining order to prevent retaliation against plaintiff for bringing this action and for $5 million in punitive damages.

"[I]t is the general and long-established rule that in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant." (*Serrano v. Priest* (1976) 18 Cal.3d 728, 752.) Employees who are not alleged to be such officials are not proper defendants. (*State of California v. Superior Court (Veta)* (1974) 12 Cal.3d 237, 255.)

The first amended complaint alleges the DSH operates Coalinga State Hospital, plaintiff was committed to DSH, and DSH conducts risk assessments to determine suitability for discharge or outpatient treatment. The SVPA provides that the DSH is responsible for operation of Coalinga State Hospital. (§ 6600.05.) It also places on the DSH and its director responsibility for conducting annual examinations of those committed under the SVPA, to consider whether they continue to meet the definition of a sexually violent predator and whether they should be conditionally released to outpatient treatment or unconditionally discharged, and to report to the court on those questions. (§§ 6604.9, 6607.) The first amended complaint, however, was not brought against the DSH or anyone alleged to be a DSH official. It was brought against individual hospital employees. The first cause of action contains no allegations that any of the named defendants was an officer of the DSH, or a state officer with statewide administrative functions under the SVPA. Consequently, the first cause of action, to the extent it seeks declaratory and injunctive relief, was not properly alleged against these defendants.

The first amended complaint prays for monetary damages against defendants. Under the United States Constitution, "[a] federal due process violation through which money damages are sought may be raised through the vehicle of 42 United States Code section 1983, … which creates a private right of action." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 265, fn. 44 (*Shaw*).) Thus, a cause of action directly

alleging facial unconstitutionality of a state statute is not the proper vehicle for obtaining money damages for an alleged violation of the plaintiff's civil rights.[2] We address plaintiff's civil rights causes of action under 42 United States Code section 1983 below.

The trial court did not err in sustaining the demurrer to the first cause of action.

B. As applied challenge

"An as applied challenge [to the constitutionality of a statute] may seek (1) relief from a specific application of a facially valid statute or ordinance to an individual or class of individuals who are under allegedly impermissible present restraint or disability as a result of the manner or circumstances in which the statute or ordinance has been applied, or (2) an injunction against future application of the statute or ordinance in the allegedly impermissible manner it is shown to have been applied in the past. It contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right." (*Tobe, supra*, 9 Cal.4th at p. 1084.)

"The result of a successful as-applied challenge to a particular statute is not the invalidation of the statute as a whole, but rather an order enjoining specific unlawful application of the statute. [Citation.] In general, a complaint that seeks to 'enjoin *any* application of the ordinance to *any* person in *any* circumstance' constitutes a facial attack on the statute." (*California Family Bioethics Council, LLC v. California Institute for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1339.)

Plaintiff's second cause of action alleges the SVPA is unconstitutional as applied, because it violates the Fourteenth Amendment. Plaintiff alleges his confinement for an

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2 We note that a claim for monetary damages based on an alleged violation of the due process clause of the California Constitution (Cal. Const., art. I, § 7) also would not state a cause of action. The due process clause of the California Constitution does not create a private right of action for money damages. (*Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 329; *Shaw*, *supra*, 170 Cal.App.4th at p. 265, fn. 44.)

indeterminate time is not reasonably related or narrowly tailored to the purpose of his commitment, DSH has failed to fulfill its mandate to treat him and reintegrate him into society, the SVPA is not narrowly tailored to the purposes of protecting the public and providing treatment to him, and the SVPA fails to provide for "periodic, outside, independent assessments" to determine whether he remains as dangerous as when he was committed. Plaintiff alleges no facts peculiar to him that show an unconstitutional application of the SVPA statutes to him. The indeterminate duration of the commitment, the alleged lack of narrow tailoring of the statute to its purposes, and the alleged failure to provide for independent assessments of continued dangerousness are challenges to the provisions of the SVPA on its face. As to the allegation that DSH has failed to fulfill its constitutional and statutory mandate to treat plaintiff and reintegrate him into society, DSH is not a named defendant in this action.

The first amended complaint alleges defendants supervised, taught, facilitated, and promoted his treatment programs, classes, and groups; they provided program booklets and materials. Those factual allegations are inconsistent with his conclusory allegation that DSH failed to treat him.

Plaintiff seems to complain that the treatment has not been effective. Deprivation of "effective" treatment is not a constitutional violation, however. The California Supreme Court has rejected the "suggestion that the Legislature cannot constitutionally provide for the civil confinement of dangerous mentally impaired sexual predators unless the statutory scheme guarantees and provides 'effective' treatment." (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1164 (*Hubbart*).) Further, the United States Supreme Court has "never held that the Constitution prevents a State from civilly detaining those for whom no treatment is available, but who nevertheless pose a danger to others." (*Kansas v. Hendricks* (1997) 521 U.S. 346, 366.) Section 6606 requires that individuals committed under the SVPA be afforded treatment for their diagnosed mental

disorders. (§ 6606, subd. (a).) It also provides, however, that "[t]reatment does not mean that the treatment be successful or potentially successful." (§ 6606, subd. (b).)

Plaintiff has alleged no facts showing that defendants are proper persons to charge with failing to reintegrate him into society. The SVPA places responsibility for conducting annual examinations of the committed person's mental condition on the DSH. (§ 6604.9, subd. (a).) The DSH is also responsible for annually reporting to the court, based on examination of the committed person by a qualified professional, whether it would be in the best interests of the committed person to be unconditionally discharged or conditionally released to a less restrictive alternative; if discharge or release is considered to be appropriate, the director of the DSH authorizes the committed person to file a petition with the court for unconditional discharge or conditional release. (§ 6604.9, subds. (a), (b), (c), (d).) The committed person may also petition the court for conditional release without the recommendation of the director of the DSH. (§ 6608, subd. (a).) Plaintiff does not allege any defendant was involved in the examination and evaluation activities on behalf of DSH. Further, he does not allege any defendant prevented plaintiff from being examined or from petitioning for conditional release, with or without the director's recommendation.

The second cause of action fails to allege facts showing that any defendant applied the SVPA to plaintiff in an unconstitutional manner. The trial court properly sustained the demurrer to this cause of action.

IV. Civil Rights Causes of Action

The third, fourth, and fifth causes of action allege various violations of the due process clause of the Fourteenth Amendment. Although they do not mention the federal civil rights statute (42 U.S.C. § 1983), the first amended complaint elsewhere alleges that the claim for monetary damages is based on that statute. The statute "is not itself a source of substantive rights, ' "but merely provides 'a method for vindicating federal rights elsewhere conferred.' " [Citation.]' [Citation.] It allows actions against state or

local officials for actions that have violated constitutional rights." (*McAllister v. Los Angeles Unified School Dist.* (2013) 216 Cal.App.4th 1198, 1207.) Accordingly, we consider whether these claims state causes of action for violation of plaintiff's civil rights under 42 United States Code section 1983.

"Every person who, under color of any statute … of any State …, subjects, or causes to be subjected, any … person … to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured." (42 U.S.C. § 1983.) "Traditionally, the requirements for relief under section 1983 have been articulated as: (1) a violation of rights protected by the Constitution … , (2) proximately caused (3) by conduct of a 'person' (4) acting under color of state law." (*Crumpton v. Gates* (9th Cir. 1991) 947 F.2d 1418, 1420.) The plaintiff must allege and prove the defendant's personal participation in the alleged rights deprivation; there is no respondeat superior liability under the statute. (*Jones v. Williams* (9th Cir. 2002) 297 F.3d 930, 934.) Additionally, the defendant cannot be held liable merely because of membership in a group that allegedly violated the plaintiff's rights, without a showing of individual participation in the unlawful conduct. (*Id.* at p. 935.) "A plaintiff must allege facts, not simply conclusions, that show that an individual was personally involved in the deprivation of his civil rights." (*Barren v. Harrington* (9th Cir. 1998) 152 F.3d 1193, 1194.)

Causation is a required element of the claim. "A person deprives another 'of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that *causes* the deprivation of which [the plaintiff complains].' [Citation.] The inquiry into causation must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation." (*Leer v. Murphy* (9th Cir. 1988) 844 F.2d 628, 633.) Even when the complaint is liberally construed, "[v]ague and conclusory allegations of

official participation in civil rights violations are not sufficient to withstand" a demurrer. (*Litmon v. Harris* (9th Cir. 2014) 768 F.3d 1237, 1241.)

The third cause of action alleges defendants failed to provide plaintiff treatment and their treatment program is a sham. It also seems to allege plaintiff is no longer dangerous, but he has not been released. Plaintiff fails to allege facts showing that defendants' participation in his treatment program was a proximate cause of any injury to him.

As previously discussed, ineffective treatment is not a constitutional violation. (*Hubbart, supra*, 19 Cal.4th at p. 1164.) Under the SVPA, a person committed as a sexually violent predator "shall be provided with programming by the State Department of State Hospitals which shall afford the person with treatment for his or her diagnosed mental disorder." (§ 6606, subd. (a).) "The programming provided by the State Department of State Hospitals in facilities shall be consistent with current institutional standards for the treatment of sex offenders, and shall be based on a structured treatment protocol developed by the State Department of State Hospitals." (§ 6606, subd. (c).) "Treatment does not mean that the treatment be successful or potentially successful." (§ 6606, subd. (b).) Thus, the SVPA places on the DSH the responsibility for developing and providing treatment programs for committed persons. The third cause of action does not allege defendants had any authority to make decisions or act on behalf of the DSH in doing so. It does not allege defendants chose or were responsible for choosing the treatment programs plaintiff used.

The injury plaintiff claims is his continued confinement at Coalinga State Hospital. The SVPA provides procedures for the committed person's unconditional discharge or conditional release to an outpatient program when the person no longer meets the definition of a sexually violent predator or no longer requires confinement. Although plaintiff seems to allege he no longer meets the requirements for confinement, he does not allege any of the defendants have responsibilities relating to conditional

release of patients who meet the criteria for conditional release. He also does not allege any conduct of defendants that interfered with or prevented any effort by plaintiff to obtain a release.

The definition of a sexually violent predator requires that the person have a diagnosed mental disorder and that he pose a danger to others of engaging in sexually violent criminal behavior. (§ 6600, subd. (a)(1).) Plaintiff alleges he is no longer dangerous or his dangerousness has been reduced to the point that he should be released to an outpatient program. Thus, although he alleges the treatment program was a sham, which did not effectively treat the mental disorder that resulted in his confinement, he nonetheless alleges he qualified for conditional release because of his reduced dangerousness. Thus, on the facts alleged, any acts of defendants in teaching classes or providing program materials, and any shortcomings in the treatment program itself, were not a proximate cause of defendant's continued confinement.

Plaintiff's overriding complaint seems to be that DSH cannot, on its own authority, unconditionally discharge him or conditionally release him to an outpatient treatment program; rather, he can be discharged or conditionally released only through a judicial proceeding. A court proceeding, however, provides procedural due process. Plaintiff has not alleged that he petitioned the court for a conditional release as permitted by section 6608, subdivision (a). He has not alleged any defendant prevented him from doing so. Plaintiff has not challenged any of the procedures provided for in the court proceedings as unfair or inadequate to protect his liberty interests. Thus, plaintiff's third cause of action fails to allege a denial of due process. It also lacks factual allegations that any conduct of defendants was a proximate cause of his alleged injury.

The fourth cause of action alleges plaintiff's civil confinement must bear a reasonable relation to the purposes of his commitment, his confinement has continued although he no longer meets the statutory requirements for confinement, and the deprivation of his liberty caused by his confinement has become punitive, all in violation

of his due process rights. The fifth cause of action alleges a Fourteenth Amendment violation, based on plaintiff's allegation he can only be released to outpatient treatment through a bench trial, rather than on DSH's direction. Both causes of action fail to allege any acts of defendants, by which they participated in the alleged deprivation of plaintiff's rights. Both also fail to allege a causal connection between any acts of defendants and plaintiff's claimed injury. The fifth cause of action also appears to constitute a facial constitutional challenge to the statute, because it challenges the provisions of the SVPA rather than any conduct of defendants.[3]

The sixth cause of action alleges deprivation of plaintiff's right to humane treatment under the Fourth and Fourteenth Amendments. Plaintiff alleges various actions deprived him of this right, including housing him in a crowded dorm, limiting his personal property, dictating times for showers, denying him the right to buy certain items and grow his own vegetables, limiting some of his food choices, and transporting him to medical appointments in Department of Corrections and Rehabilitation transport vans and in chains. Plaintiff does not allege any facts connecting any of the defendants to these alleged deprivations.

We conclude the trial court did not err in sustaining defendants' demurrer to the third through sixth causes of action, which attempted to state causes of action for violation of plaintiff's civil rights pursuant to 42 United States Code section 1983.

V. Breach of Contract

Plaintiff's seventh cause of action attempts to allege "breach of contract and tortious interference with contract." As defendants point out, plaintiff does not mention this cause of action in his brief, and therefore has not shown any error by the trial court in sustaining the demurrer to this cause of action. Consequently, we have no ground for reversing the trial court's decision on the seventh cause of action.

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[3] We note that plaintiff's disagreements with the requirements of the SVPA and suggestions for additional oversight of the state hospital's operations would be more appropriately directed to the Legislature.

VI. Leave to Amend

We review the denial of leave to amend for abuse of discretion. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) "Generally it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment. [Citation.] However, the burden is on the plaintiff to demonstrate that the trial court abused its discretion. [Citations.] Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

Plaintiff has not suggested any facts he could add to the first amended complaint to cure the defects in his causes of action. "Where the appellant offers no allegations to support the possibility of amendment … , there is no basis for finding the trial court abused its discretion when it sustained the demurrer without leave to amend." (*Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 745.) Accordingly, we conclude plaintiff has not demonstrated that the trial court abused its discretion by denying him leave to amend.

DISPOSITION

The judgment is affirmed. Defendants are entitled to their costs on appeal.

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HILL, P.J.

WE CONCUR:

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POOCHIGIAN, J.

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FRANSON, J.